

II. Remarks and Conclusion

Claims 1, 4-6, 9-11, and 13-16 are presently pending. Claims 17-20 have been withdrawn as directed to the non-elected invention, without prejudice or disclaimer. Claims 2, 3, 7, 8, and 12 have been cancelled. Claims 1, 4, 5, 6, and 9 have been amended. The amendments to Claims 4, 5, 6, and 9 are not limiting and no estoppel will result, as the amendments merely accommodate the amendments made to Claim 1, change dependency, are inherent and the like. The amendment to Claim 1 merely adds the definition of the class of antigenic reoviruses that may be grown on Vero cells without prior adaptation. Heretofore, no reovirus has been grown to a titer of 3.0 TCID₅₀/ml on Vero cells without prior adaptation. The definition of the class can be found in application serial number 09/493,484 filed on January 28, 2000. The '484 application has been allowed.

A. Claim Objections

Claim 7 stand objected for not providing a complete spelling of the abbreviation. Applicant has cancelled Claim 7, without prejudice or disclaimer. Applicant respectfully requests reconsideration.

B. Section 112 Rejections

Claims 2, 7, and 8 stand rejected under 35 USC §112, 1st ¶, as not being enabled without deposit of the biological material. Applicant submits a Declaration by the attorney William P. Ramey, III, certifying that strain ERS 1037; strain ERS 060E; and, strain ERS 074 are deposited

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at the ATCC; and, monoclonal antibodies INT 13-06, INT 14-11, and 15-01 INT are deposited at the ECACC, all of which are deposited according to the Budapest Treaty and that all restrictions will be removed upon grant of a patent. In light of these arguments and the submission of the Declaration of William P. Ramey, III, Applicant respectfully requests reconsideration of the rejection.

The Examiner has also required that the information be added to the specification. Applicant asserts that the claimed information can be found in the Summary of the Invention. In light of the fact that the information is located in the Summary of the Invention, Applicant respectfully requests reconsideration.

Claims 1 and 3-16 stand rejected under 35 USC §112, 1st ¶ as not being enabled for all avian reoviruses. Applicant has amended Claim 1 to recite a method of propagating an avian reovirus, belonging to an antigenic class of avian reovirus ERS isolates, on Vero cells, without prior adaptation, wherein the avian reovirus is able to induce antiserum in an animal, which antiserum causes a reduction of the plaques formed by avian reovirus ERS, a sample of which is deposited at the ECACC under accession no. 99011475, of at least 75% in a plaque reduction assay and wherein the avian reovirus positively reacts with polyclonal avian reovirus antiserum but not with monoclonal antibodies identified by accessions nos. 99011472, 99011473 and 99011474, samples of which are deposited at the ECAC, comprising the steps of:

- a. inoculating a Vero cell with the avian reovirus;
- b. allowing the avian reovirus to multiply to a titer of at least about 3.0 TCID₅₀/ml;

and,

c. . harvesting the avian reovirus.

The added definition of the claimed class of avian reovirus is taken directly from Applicant's allowed case, US serial number 09/493,484 filed on January 28, 2000. Accordingly, Applicant is not claiming all avian reoviruses. Applicant is claiming a method of growing a particular class of avian reoviruses that can be grown on Vero cells. In light of this amendment, Applicant respectfully requests reconsideration.

Claims 1 and 3-16 stand rejected under 35 USC §112, 1st ¶ as failing to comply with the written description requirement. Applicant has amended Claim 1 to recite distinguishing characteristics of the class of avian reoviruses. In fact, the limitations have been judged as allowable in a separate case, as having complied with the written description requirement. In light of this amendment, Applicant respectfully requests reconsideration.

Claims 1-16 stand rejected under 35 USC §112, 2nd ¶ as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has addressed each of the concerns as follows:

As to Claim 1, Applicant has amended to further specify a suitable titer.

As to Claim 3, the dependency has been corrected.

As to Claims 7 and 8, both are cancelled, without prejudice or disclaimer.

As to Claims 9-12, amendments have been made to correct the claim language.

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C. Rejections under 35 USC § 102(b)

Claims 1, 8-10, 12, 13, and 16 stand rejected under 35 USC § 102(b) as being anticipated by a 1992 article to Rekik et al. (hereinafter referred to as the Rekik article). The Examiner asserts that the Rekik article discloses avian reoviruses being grown on Vero cells and then harvested. Applicant respectfully requests reconsideration in light of the following argument and the amendments.

To begin, the Rekik article does not disclose growing reoviruses on Vero cells to any useable titer. The Rekik article is concerned with harvesting RNA from the reovirus, not growing the reovirus. Accordingly, the Rekik article has not illustrated the growth of the reovirus to any titer. Therefore, the Rekik article does not contain all of the limitations of Applicant's claims. In fact, as Applicant has amended Claim 1 to specify that a suitable titer is at least about 3.0 TCID₅₀/ml, the Rekik article does not contain the limitations of Applicant's invention and, therefore, does not anticipate.

D. Rejections under 35 USC §103(a)

Claims 1, 3-6, 8-10, and 12-16 stand rejected under 35 USC §103(a) as being unpatentable over the Rekik article in view of US Pat. No. 5,162,369 (hereinafter referred to as the '369 patent) and US Pat. No. 5,525,342 (hereinafter referred to as the '342 patent). However, in light of the amendments to Claim 1 and the arguments above, the combination of the Rekik article, the '369 patent, and the '342 patent is not Applicant's invention. All of the elements of Applicant's invention are not disclosed by the cited references. Applicant's invention, in an

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embodiment, is a method of propagating an avian reovirus, belonging to an antigenic class of avian reovirus ERS isolates, on Vero cells, without prior adaptation, wherein the avian reovirus is able to induce antiserum in an animal, which antiserum causes a reduction of the plaques formed by avian reovirus ERS, a sample of which is deposited at the ECACC under accession no. 99011475, of at least 75% in a plaque reduction assay and wherein the avian reovirus positively reacts with polyclonal avian reovirus antiserum but not with monoclonal antibodies identified by accessions nos. 99011472, 99011473 and 99011474, samples of which are deposited at the ECACC, comprising the steps of:

- a. inoculating a Vero cell with the avian reovirus;
 - b. allowing the avian reovirus to multiply to a titer of at least about $3.0 \text{ TCID}_{50}/\text{ml}$;
- and,
- c. harvesting the avian reovirus.

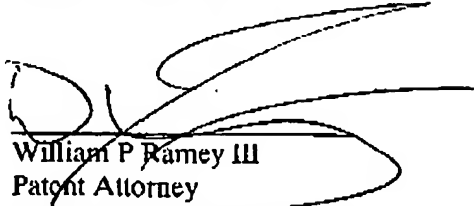
Applicant respectfully requests reconsideration.

E. Conclusion

The application is believed in a condition for allowance and Applicants respectfully request such action. Please call the undersigned attorney for any assistance in securing allowance of this application.

Please charge deposit account 02-2334 for any required fees and to credit any credits.

Respectfully submitted,



William P Ramey III
Patent Attorney
Registration Number 44,295

Akzo Nobel Pharma Patent Department
P.O. Box 318
29160 Intervet Lane
Millsboro, DE 19966
Tel: (302) 933-4034
Fax: (302) 934-4305

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